

Pt. 440, App. D

14 CFR Ch. III (1–1–12 Edition)

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____
Its: _____

[Doc. No. FAA-2010-1150, 76 FR 8635, Feb. 15, 2011]

APPENDIX D TO PART 440—AGREEMENT FOR WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY FOR A CREW MEMBER

THIS AGREEMENT is entered into this _____ day of _____, by and among [name of Crew Member] (the “Crew Member”) and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the “Parties”), to implement the provisions of section 440.17(f) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the “Regulations”). This agreement applies to the Crew Member’s participation in activities that the FAA has authorized by license or permit during the Crew Member’s employment with [Name of licensee or permittee].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. DEFINITIONS

Crew Member means

- (a) The above-named Crew Member,
- (b) All the heirs, administrators, executors, assignees, next of kin, and estate of the above-named Crew Member, and
- (c) Anyone who attempts to bring a claim on behalf of the Crew Member or for damage or harm arising out of the Bodily Injury, including Death, of the Crew Member.

License/Permit means License/Permit No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee/Permittee, including all license/permit orders issued in connection with the License/Permit.

Licensee/Permittee means the Licensee/Permittee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed/Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701, or the Regulations, respectively.

2. WAIVER AND RELEASE OF CLAIMS

(a) Crew Member hereby waives and releases claims it may have against the United States, and against its respective Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against the Crew Member for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed/Permitted Activities, regardless of fault.

3. ASSUMPTION OF RESPONSIBILITY

(a) The Crew Member shall be responsible for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault. The Crew Member shall hold harmless the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

(c) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. EXTENSION OF ASSUMPTION OF RESPONSIBILITY AND WAIVER AND RELEASE OF CLAIMS

(a) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Crew Member and to agree to be responsible, for any Property Damage the Contractors and Subcontractors sustain and for any Bodily Injury, including Death, or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(c), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims the Contractors and Subcontractors may have against Crew Member and to agree to be responsible, for any Property Damage they sustain, resulting from Permitted Activities, regardless of fault.

5. INDEMNIFICATION

Crew Member shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for Property Damage or Bodily Injury, including Death, sustained by Crew Member, resulting from Licensed/Permitted Activities.

6. ASSURANCES UNDER 49 U.S.C. 70112(E)

Notwithstanding any provision of this Agreement to the contrary, Crew Member shall hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury, including Death, or Property Damage, sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault, except to the extent that, as provided in section 6(b) of this Agreement, claims result from willful misconduct of the United States or its agents.

7. MISCELLANEOUS

(a) Nothing contained herein shall be construed as a waiver or release by the United States of any claim by an employee of the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed/Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless herein shall not apply to claims for Bodily Injury, including Death, or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

IN WITNESS WHEREOF, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

I [name of Crew Member] have read and understand this agreement and agree that I am bound by it.

Crew Member

Signature: _____

Printed Name: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____
Its: _____

Associate Administrator for Commercial Space Transportation

APPENDIX E TO PART 440—AGREEMENT FOR WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY FOR A SPACE FLIGHT PARTICIPANT

THIS AGREEMENT is entered into this ____ day of _____, by and among [name of Space Flight Participant] (the "Space Flight Participant") and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of section 440.17(e) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to Space Flight Participant's travel on [name of launch or reentry vehicle] of [name of Licensee or Permittee]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. DEFINITIONS

Space Flight Participant means

(a) The above-named Space Flight Participant,

(b) All the heirs, administrators, executors, assignees, next of kin, and estate of the above-named Space Flight Participant, and

(c) Anyone who attempts to bring a claim on behalf of the Space Flight Participant or for damage or harm arising out of the Bodily Injury, including Death, of the Space Flight Participant.

License/Permit means License/Permit No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee/Permittee, including all license/permit orders issued in connection with the License/Permit.

Licensee/Permittee means the Licensee/Permittee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed/Permitted Activities.